



S.A.No.317 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.317 of 2003

1.C.Peria Perumal Nadar
2.P.Gopalan

... Defendants/Respondent/
Appellants

Vs.

1.C.Sri Raman Nadar @ Kasinadar (died) ... Plaintiff/Appellant/
Respondents

2.Lakshmi Thangam
3.Bagavathi Thangam
4.Kasi Thangam
5.Rajagopal
6.Selvakumar
7.Selvagopal

(Respondents 2 to 7 are brought on record as
Lrs of the deceased sole respondent)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 27.11.2002 and made in A.S.No.54 of 2002 on the file of the Additional District Court, Kanyakumari at Nagercoil reversing the judgment and decree dated 08.03.2022 and made



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in O.S.No.578 of 1993, on the file of the Additional District Munsif, Nagercoil.

For Appellants : Mr.V.Meenakshisundaram
for D.Nallathambi
For R2 to R6 : Mrs.J.Anandhavalli for
K.Sreekumaran Nair
For R7 : Mr.Xavier Rajini

J U D G M E N T

The respondent filed a suit against the appellants in O.S.No.578 of 1993, on the file of the Additional District Munsif, Nagercoil for declaration and permanent injunction restraining the defendant from interfering or disturbing the plaintiff's peaceful possession over the plaint schedule properties.

2. The said suit was dismissed by the trial Court on 08.03.2002. Aggrieved by the said judgment and decree, the plaintiff filed an appeal in A.S.No.54 of 2002 before the Principal District Court, Kanyakumari and the same was made over to the Additional District Court, Kanyakumari District



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at Nagercoil. The learned first appellate Court allowed the appeal by setting aside the judgment and decree passed by the Additional District Munsif, Nagercoil made in O.S.No.578 of 1993.

3. Challenging the said judgment and decree, the defendants in the suit filed the present second appeal by raising the following substantial questions of law:-

“i) When the plaintiff having admitted the fact that the settlor had no property out side Tamil Nadu and the settlement deed being executed in Kerala, is the learned Additional District Judge right in holding that the document is valid in spite of the decision rendered by this Hon'ble Court in 1988 I MLJ Page 447?

ii) When it is admitted by the plaintiff that the settlement deed was a conditional one and the settlor having revoked the same is the suit maintainable without setting aside the deed of revocation executed by the settlor?

Iii) When the plaintiff himself having impleaded the second defendant as a lessee of the settlor and having not produced any document to support the plea that he complied with the conditions under the settlement, still is the learned Additional District Judge right in granting a decree for injunction?

iv) Whether the learned Additional District Judge right in rejecting the title of the first defendant on the basis of a Will executed in his favour by Thangammal dated



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16.07.1986?

v) The plaintiff having not questioned the deed of revocation executed by Thangammal within a period of 3 years, is not the plaintiff barred from claiming any right under the settlement deed?”

4. The learned counsel appearing for the appellants would submit that the deceased first respondent was not in possession of the property and not entitled to decree for injunction claiming right in possession through the gift deed relied on by the respondent being a conditional gift and revocable at the instance of the settlor. The settlee/respondent has not followed the condition and he has not produced the evidence to show that he has complied with the conditions mentioned in the settlement deed. Subsequently, due to non-compliance of the conditions mentioned in the settlement deed, the settlor revoked the settlement deed and the same is registered one. Unless the said revocation deed was set aside, or without seeking the remedy of setting aside the revocation deed, the respondent cannot seek the relief of declaration and permanent injunction. The relief sought for in the plaint by the respondent/plaintiff is not maintainable.



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5. Further, he would submit that when once the deed is capable of revocation and a revocation being made unless it is set aside in the manner known to law, the relief sought for by the respondent is not maintainable. The settlement executed in the State of Kerala is not valid. Further, he would submit that the trial Court after considering the legal position of a document executed in a place where the Sub-Registrar has no jurisdiction. The learned first appellate Court failed to consider the legal position and simply reversed the judgment, which is erroneous.

6. Further, he would submit that the settlor had no property in Kerala and the settlement deed executed in Kerala with reference to the property situated in Tamil Nadu is not valid. Further, he would submit that the settlor during his life time let out the property to the second appellant/second defendant, therefore, the deceased respondent impleaded the second appellant in the said suit and the deceased respondent is not entitled to get a relief of injunction without amending the relief of recovery of possession. Though the trial Court appreciated the evidence and rightly



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dismissed the suit, the first appellate Court failed to appreciate the validity of the document and the legal position and also the possession, erroneously allowed the appeal, which warrants interference.

7. The learned counsel for the respondent would submit that the settlor executed a settlement deed in favour of the settlee and the settlee was in possession of the property. Similarly, the settlor executed another settlement deed in favour of the first appellant/first defendant, therefore, the appellant cannot questioned the document of settlement for want of jurisdiction. The first appellant and the deceased first respondent are the brothers. The settlor executed two settlement deeds in different properties. One is to the first appellant and another is to the deceased first respondent. Both the properties are situated only in Tamil Nadu. Both the properties are not in Kerala and the documents have been registered only at Kerala. The first appellant is in possession and he cannot questioned the document and he is estopped from raising the question.



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8. Further, he would submit that from the date of settlement, the first plaintiff was in possession of the property and neither the revocation nor the will was proved in the manner known to law. The first appellate Court is a fact finding Court it has to re-appreciate the entire evidence and give an independent findings. Though the original Will was not produced before the Court and also it was not proved in the manner known to law, the settlement deed as well as the revocation deeds are to be attested by the attestors as required under law and it has to be proved in the manner known to law. Even, the revocation also to be proved in the same way and the Will is also required under law to be attested and the same has to be proved. Therefore, the other Will or revocation of settlement deed were not proved under Section 68 of the Indian Evidence Act. The first appellate Court has rightly held that unless the revocation and the Will were proved and admitted the settlement deed and possession and there is no evidence to prove that the settlor restored the possession from the deceased first respondent/plaintiff and on the date of filing the suit, the settlor or the appellants were in the possession of the property. Therefore, there is no



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merit in the appeal and there is no substantial question of law involved in this case. Therefore, the second appeal is not maintainable and the appeal has to be dismissed.

9. Heard the learned counsel appearing on either side and perused the materials available on record.

10. This Court while admitting the second appeal, formulated the following substantial questions of law:-

“(a) When the gift deed, on which the suit is laid, contains a covenant for revocation of the said gift based on an Act not in the exclusive control of the settlor and when on the happening of the said event the gift having been revoked, would the plaintiff be entitled to the relief of title based on the original gift deed without asking for a declaration that the revocation is bad in law?

(b) Whether Ex.A.1 registered in the State of Kerala, in respect of a property not situated within the registration District of Kerala, is hit by Section 28 of the Indian Registration Act?”



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11. Since it is second appeal and this Court cannot go into the merit of the factual aspects and the appreciation and re-appreciation of evidence as held by the first appellate Court.

12. As this appeal is a statutory appeal under Section 100 C.P.C., and the Court has to entertain the appeal only based on the substantial questions of law involved in the appeal and answer for the formulated substantial questions of law.

13. In this case, this Court formulated the substantial questions of law. The questions 1 & 2 are interlinked and therefore, both the questions of law are answered as follows:-

14. Admittedly, the respondent filed the suit for declaration declaring the title and possession in favour of the plaintiff/respondent and permanent injunction stating that one Thangammal executed a settlement deed in favour of the respondent/plaintiff. Based on the settlement deed, he



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was in possession of the property and the appellants/defendants were trying to interfere with his peaceful possession and enjoyment, therefore, he filed the suit.

15. The case of the appellants/defendants is that the said settlement deed executed in favour of the respondent/plaintiff was subsequently cancelled by the settlor herself and she executed a Will in favour of the first appellant and after the cancellation of sale, the property was let out to the second defendant. The second defendant was in possession. The said Thangammal executed a Will in favour of the first appellant/first defendant. After the death of the Thangammal, the first appellant is the owner of the property and the second appellant is enjoying the property on behalf of the first appellant. Therefore, once the settlement deed is cancelled, without seeking the relief of setting aside the cancellation of settlement deed, the suit is not maintainable for declaration and the settlee has taken back the possession and the first respondent/plaintiff was not in possession and therefore, the suit for injunction is not maintainable.



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He should have sought for the relief of recovery of possession. Therefore, the suit as prayed for by the respondent/plaintiff is not maintainable.

16. Both the parties admitted that the Thangammal executed the settlement deed in favour of the respondent/plaintiff on 27.10.1980 and the first respondent has got the patta and also he was enjoying the property by paying the kist. The first respondent/plaintiff was examined and also produced all the documents. When the defendants have stated that the settlement deed was cancelled and subsequently, Will was executed and they were in possession of the property, but reading of the entire oral and documentary evidence, the respondent/plaintiff proved that the patta stands in his name and therefore, he filed a suit for partition and in that suit, a preliminary decree was granted in respect of item 1 to 5. Aggrieved against the said judgment and decree, he filed an appeal and the appeal was allowed. Ex.P6- the said judgment clearly shows that the first respondent was in possession. Ex.P2 to 4 kist receipts show that the first respondent/plaintiff is in possession and paying the kist. Even though the settlement



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deed was cancelled and the possession was restored, but none of the document to show that subsequent to the cancellation of the settlement deed, the possession was taken from the first respondent and the other settlor or the appellants were in possession of the property and no document was filed. Though Ex.B1 cancellation deed and Ex.B2 Will in favour of the appellants, both were not proved in the manner known to law by examining at least one of the attestors of the Will as contemplated under Section 68 of Indian Evidence Act.

17. Therefore, the contention of the appellant that setting aside the cancellation deed seeking the relief of recovery of possession is not acceptable and the defendants admitted the settlement deed in favour of the respondent, then it is for the defendants have to prove that the same was cancelled subsequently and possession was taken and Will was executed. In this case, the original will was not produced and not examining any of the attestor of the Will and proved the same in the manner known to law, likewise, the cancellation of settlement deed was also not proved in the



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manner known to law. Therefore, the first question of law formulated by this Court is answered accordingly.

18. As far as the second substantial question of law is concerned, it is an admitted fact that Ex.A1 settlement deed was registered in the State of Kerala, whereas, the property situated in the State of Tamil Nadu. The main contention of the respondent is that the said Thangammal executed a settlement deed, like, Ex.A1 in favour of the first appellant. The property covered in that settlement deed also is situated only in Tamil Nadu and the same was also registered in Kerala. Both the documents registered in the same way and when the appellants enjoying the property, he cannot questioned the same procedure adopted by the first respondent. Even though there is no estoppel against the law, whereas, in this case, the appellants have not questioned the execution of settlement deed. The settlement deed in favour of the first respondent is not valid and the title did not pass through the first respondent and he never took the possession. The claim of the appellants are that the settlement deed in favour of the



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respondent was subsequently cancelled and therefore, they admitted the document, namely, the settlement deed executed in favour of the respondent/plaintiff and they stated that subsequently, it was cancelled and the Will was executed with reference to the same property. Therefore, the appellant is estopped from raising such plea. Once they accepted the judgment and decree and stated that the settlement deed was revoked, under these circumstances, the question raised by the appellant is not acceptable and therefore, both the substantial questions of law are answered in favour of the respondent and as against the appellants and there is no merit in the appeal. Therefore, the second appeal is dismissed. No costs.

Index : Yes / No

Speaking Order : Yes / No

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To

- 1.The Additional District Court,
Kanyakumari at Nagercoil.
- 2.The Additional District Munsif,
Nagercoil.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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